

(2020) 10 JH CK 0051

In the Jharkhand High Court

Case No : Writ Petition(S) No. 6064 Of 2010

Alok Nath Mukherjee And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Citation : (2020) 10 JH CK 0051

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Saurabh Arun, Vandana Singh

Final Decision : Dismissed

Judgement

1. The instant application has been preferred by the petitioners for quashing the order as contained in Memo Nos.757, 753 & 755 dated 28.09.2010 (Annexure-8 series), whereby the petitioners have been dismissed from their service without any cogent and justifiable reason. It has been further prayed for a direction upon the respondent authorities to allow the petitioners to continue on their post of Class-IV.

2. The facts of the case as indicated in the instant writ application is that the petitioners were appointed on the post of Umidwar Peon in Bokaro Collectorate on daily wages basis since 1982 and continued to work till the year 1999. On 09.01.1999, an Advertisement No.27 was published inviting applications for appointment to the post of 4th Grade in Bokaro Collectorate and the minimum qualification was mentioned to be Class VII and reading and writing of Devnagri script (Hindi) with knowledge of cycling.

3. Pursuant to the aforesaid advertisement, the petitioners applied for the post including the school leaving certificate indicating the educational qualification of the petitioners, which was class-8. Earlier, the petitioners have also filed writ application being W.P.(S) No.2941 of 2003 and W.P.(S) No.5796 of 2002 praying for direction upon the respondents to make regular appointment of the

petitioners in pursuance of the aforesaid advertisement. The said writ application was disposed of directing the respondents to fill up the post which are lying vacant by giving age relaxation and considering the past experience of their service.

4. Pursuant to that on 18.03.2005, the Deputy Commissioner vide Memo No.146 dated 18.03.2005 issued appointment letter to the petitioners on class-IV post and thus, the petitioners were duly appointed on the vacant and sanctioned post of class-IV. However, in the year, 2007 vide letter dated 17.04.2007, separate show cause was issued to the petitioners seeking explanation against the allegation that the documents which were submitted by them at the time of their appointment, especially the School Leaving Certificate which exhibited their educational qualification as standard 8, was found forged and the petitioners were directed to file reply.

5. Pursuant to the said show cause notices, the petitioners filed detailed reply, thereafter, Departmental Proceeding was initiated. The enquiry officer vide its enquiry report dated 28.03.2008 had given specific findings that the certificate endorsing the educational qualification of the petitioners were found correct and further gave finding that looking at past service record of petitioners, they can be given a warning and charges levelled against them can be expunged with further observation that their suspension be also revoked (Annexure-6).

6. Though the enquiry report was clear and specific in terms of the certificates, however, second show cause notices were issued to the petitioners reiterating the same fact that the documents submitted by the petitioners were found to be forged and the petitioners were asked to submit reply as to why they should not be removed from service.

7. Pursuant to that, the petitioners filed detailed reply and specifically submitted that if at all any discrepancy has been occurred; then the petitioners were not responsible for the same. However, without considering second show cause reply filed by the petitioners, they were terminated from service vide impugned orders all dated 28.09.2010.

8. A counter affidavit has been filed in this case wherein it has been stated that the reports of inquiry officers in case of all the 3 petitioners has been found to be incomplete and vague. None of the reports was specific regarding the genuineness of the educational qualification certificates and that is the reason that vide order dated 02.08.2010 the entire case record was sent for fresh enquiry to District Welfare Officer-Sri Jugnu Minz to enquire into the matter and submit its report.

9. For better appreciation of case, paragraph Nos. 5, 6, 7, 8 and 9 of the supplementary counter affidavit dated 21.02.2015, are quoted herein below:

"5. It is stated that the First Enquiry report was submitted by DCLR Chas cum enquiry officer vide letter dated 28.03.08 whereby the enquiry officer had

suggested to exonerate the petitioner. Secondly the enquiry officer in one of the paragraph stated that the certificates submitted by the petitioner were forged and on other hand he stated that the document is not forged. And at last he referred the matter to higher officers for the needful which is annexed to the earlier affidavit as Annexure-A. The report was contradictory, vague and against the established by law submitted by the first enquiry report.

6. It is stated and submitted that as the report was contradictory and vague which created the suspicion so the Deputy Commissioner Bokaro wrote a letter to the District Welfare Officer, Bokaro for conducting 2nd enquiry vide letter No.-515 dated 02.08.2010 (Annexure-D).

7. In compliance of letter dated 02.08.2010 (Annexure-D) the District Welfare Officer issued show cause notice to the petitioners for filing reply in order to hear the petitioners.

8. The petitioners filed their reply whereby no where they had objected the 2nd enquiry conducted against them, was illegal and wrong.

9. The enquiry report regarding the genuineness of the school leaving certificates of the petitioners submitted by the enquiry officers were found forged. Further, the petitioners have accepted the fact that forged documents were placed in the records of the petitioners. It is relevant to state here that vide letter dated 25.08.2010 the 2 nd enquiry report submitted by the enquiry officer, DWO, Bokaro against the petitioner no.-1 (Annexure-E)."

10. Heard learned counsel for the parties through V.C. and perused the materials available on record. It is an admitted position that the Disciplinary Authority without differing from the finding of Inquiry Officer's report asked for fresh enquiry by appointing a new Inquiry Officer which is in the teeth of the Judgment passed by Hon'ble Apex Court in the case of K.R. Deb vs. The Collector of Central Excise, Shillong reported in 1971 (2) SCC 102. It is also an admitted fact that no 2nd enquiry report has been given to the petitioners and the same has not been denied in the counter affidavit.

11. It further transpires that the Respondents in their counter affidavit has stated that the educational qualification was class 8th pass and not class 7th pass, which is against the Advertisement as contained in Annexure-2 to the writ application which only speak about class 7th pass. The Respondents also argued the subsequent qualification has been changed but not annexed any documents or corrigendum that the qualification has been changed. At this stage it is clarified that even if qualification has been changed subsequently; any change during the period of selection process is also against the law as "rule of the game cannot be changed when the selection process is initiated".

12. It has further been argued by the Respondent State that no prejudice has been caused due to non- supply of 2nd enquiry report. This argument of the Respondent is misconceived inasmuch as the petitioners have suffered civil

consequences as they have been terminated from their service from the finding of the 2nd enquiry report to which the petitioner were not aware about its finding as the same has not been handed over to them.

13. In the case of K.R. Deb vs. The Collector of Central Excise, Shillong reported in 1971 (2) SCC 102 the Hon'ble Apex Court has laid down the law in para 12 is as under:

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9."

14. As a matter of fact now it is well settled that once the Inquiry Officer found the charges against the petitioners not proved, it will be open to the Disciplinary Authorities to issue show cause notice to the delinquent employee indicating the grounds on which the Disciplinary Authority decided to disagree with the findings recorded in the departmental proceeding. However, it was not open to the Respondents to conduct a fresh enquiry into the allegation contained in the charge memo. It was open to the disciplinary authority to pass order of punishment after complying with the requirements of the principle of natural justice. However, it is not open to the respondent authorities to conduct a fresh enquiry into the matter that too at the back of the delinquent employee.

15. Learned counsel for the Respondent State heavily relied upon the judgment passed in the case of Nand Kumar Verma vs. State of Jharkhand and others reported in 2012 vol 3 SCC 580 wherein the Hon'ble Apex Court in para 26 has held as under:

"26. In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is permissible."

16. The aforesaid judgment will not be helpful for the Respondent State

inasmuch as in the instant case the first enquiry was not found bad in law. As per the Respondents, the same was vague and perverse. As such, the correct procedure would have been to issue show cause notice to the petitioners indicating the grounds on which the disciplinary authority decided to disagree with the findings recorded in the departmental proceeding and then pass appropriate order but cannot appoint a fresh Inquiry Officer and take his opinion that too without any notice to the petitioners.

17. In view of the aforesaid facts and the judicial pronouncement referred to herein above, the instant writ application is allowed and the impugned orders as contained in Memo Nos. 757, 753 & 755 dated 28.09.2010 (Annexure-8 series), are hereby, quashed and set aside. It would be open to the Respondents to pass a fresh order in the matter in accordance with law after following principles of natural justice.